The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 02-84-A May 19, 2005

Petition of Fitchburg Gas and Electric Light Company for approval of its 2002 Transition Charge True-Up, pursuant to G.L. c. 164, § 1A(a) and 220 C.M.R. § 11.03(4)(e).

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FOR: FITCHBURG GAS AND ELECTRIC LIGHT COMPANY
Petitioner

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I. INTRODUCTION

On December 20, 2002, Fitchburg Gas and Electric Light Company ("Fitchburg" or "Company") filed, pursuant to G.L. c. 164, § 1A(a) and 220 C.M.R. § 11.03(4), its 2002 reconciliation filing with the Department of Telecommunications and Energy ("Department"). Included in this filing is (1) a reconciliation of the Company's 2002 transition, transmission, standard offer service, and default service costs and revenues, and (2) proposed updated charges and tariffs to be effective for consumption on and after January 1, 2003. In addition, on December 20, 2002, Fitchburg filed a proposed standard offer service fuel adjustment ("SOSFA"). The Department docketed this filing as D.T.E. 02-84. On January 6, 2003, the Department approved the filing and Fitchburg's SOSFA, subject to final reconciliation following an investigation. Fitchburg Gas and Electric Light Company, D.T.E. 02-84 (2003). The Company's last reconciliation filing and SOSFA were approved in Fitchburg Gas and Electric Light Company, D.T.E. 01-103-A (2002).

On February 13, 2003, the Department conducted a public hearing and a procedural conference. The Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, § 11E. On February 20, 2003, the Department granted the motion of Constellation NewEnergy for limited participant status. On April 7, 2003, the Department held an evidentiary hearing. At the evidentiary hearing, the Company presented the testimony of Mark H. Collin, treasurer of Fitchburg and secretary of Fitchburg's parent Unitil Service Corporation ("Unitil"); Karen M. Asbury, director of regulatory services for Unitil; Douglas J. Debski, a senior regulatory analyst for Unitil; and David K. Foote, senior

vice president of both Fitchburg and Until. On April 22, 2003, the Company filed an initial brief and on May 1, 2003, the Attorney General filed an initial brief. On May 6, 2003, the Company filed a reply brief. The Attorney General did not file a reply brief. The evidentiary record consists of 60 exhibits and four responses to record requests.

II. STANDARD OF REVIEW

In reviewing annual reconciliation filings, the Department must ensure that the proposed reconciliations are consistent with or substantially comply with the Electric Utility Restructuring Act, Chapter 164 of the Acts of 1997 ("Restructuring Act"), G.L. c. 164, §§ 1A through 1H, the company's restructuring plan, applicable law, and Department precedent. In Fitchburg Gas and Electric Light Company, D.P.U./D.T.E. 97-115/98-120, at 78 (1999), the Department found that Fitchburg's restructuring plan substantially complied or was consistent with G.L. c. 164.

III. OUTSTANDING PROCEDURAL MATTERS

A. Introduction

On April 9, 2003, Fitchburg filed a motion to reopen the record to admit revised schedules ("Motion") and an affidavit in support of the Motion. On April 16, 2003, the Attorney General filed a response to the Company's Motion ("Attorney General Response"). On May 13, 2003, the Attorney General filed a motion to strike Fitchburg's affidavit and portions of the Company's reply brief that reference the affidavit ("Motion to Strike"). On May 16, 2004, the Company filed a response to the Motion to Strike ("Fitchburg Response").

B. Positions of the Parties

1. Fitchburg

Fitchburg requests that the Department admit, post-hearing, revised schedules to correct an error contained in Exhibit MHC-1, Schedule MHC-4.[1] Specifically, Fitchburg claims that the revised schedules correct an error in the forecasted load for the Company's G-3 rate class contained in Schedule MHC-4 (Motion at 2-3). The Company claims that the current figures provided in Schedule MHC-4 do not represent the forecasted load for the entire G-3 rate class (id.).[2] The Company asserts that it did not discover this error until after the close of hearings (id.).

Fitchburg argues that good cause exists to admit the revised schedules because the Department's review would be more complete if the record included the correct forecasted load for the G-3 rate class (id. at 2-4). The Company asserts that the requested supplement does not require any change in the rates it has proposed in this proceeding (id. at 3). According to the Company, the corrected forecasted load for the G-3 rate class reduces what otherwise appears to be a transition charge subsidy between the residential and large industrial rate classes (id.).[3]

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[1] Schedule MHC-4 presents Fitchburg's monthly transition cost reconciliation.

[2] Fitchburg asserts that this same error also affects its internal transmission charge reconciliation, "although very slightly" (Motion at 3). The Company states that any resultant overcollection of the internal transmission service cost adjustment will be refunded to customers, with interest, in 2004 (id.).

[3] The Company argues that, instead of an apparent $450,000 subsidy in favor of the G-3 rate class in projected 2003 transition charge revenues, the proposed correction would reduce the forecasted subsidy to approximately $67,000 (Motion at 3).

Finally, Fitchburg argues that the Department should disregard the Attorney General's Motion to Strike because the Company's reference to revised Schedule MHC-4 in its reply brief and attached affidavits is a routine correction of data already in evidence (Fitchburg Response at 1, citing Berkshire Gas Company, D.T.E. 01-56 (2002); Fitchburg Gas and Electric Light Company, D.T.E. 02-24/25 (2002); Blackstone Gas Company, D.T.E. 01-50 (2001); Boston Gas Company, D.T.E. 88-67 (1989).

2. Attorney General

The Attorney General argues that the Company has failed to establish good cause to reopen the record and, therefore, Fitchburg's Motion to admit evidence after the close of hearings should be denied (Attorney General Response at 1). The Attorney General argues that (1) the Company knew or should have known of the discrepancy regarding Schedule MHC-4 prior to the evidentiary hearing, and (2) Fitchburg had ample time to update this schedule prior to the close of evidentiary hearings (id. at 2-3).

The Attorney General asserts that the information Fitchburg seeks to have admitted post-hearing is not supported by sworn testimony, was not subjected to cross-examination and, therefore, its admission would be prejudicial (id.). In addition, the Attorney General contends that the information Fitchburg seeks to have admitted post-hearing concerns projections of what may happen in 2003. As such, the Attorney General argues that the information is immaterial to the Department's decision in this case, but instead will be at issue in the Company's 2003 reconciliation proceeding (id. at 1-3). Finally, the Attorney General requests that the Department strike portions of Fitchburg's reply brief and an attached affidavit

discussing the proposed revision to Schedule MHC-4 because they reference extra-record evidence (Motion to Strike at 3, citing Mass.R.Civ.P. Rule 12; 220 C.M.R. §§ 1.11(7),(8)).[4]

C. Analysis and Findings

The Department's regulations at 220 C.M.R. § 1.11(8) state that "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." Good cause has been defined as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. D.T.E. 01-50, at 14; Machise v. New England Telephone and Telegraph Company, D.P.U. 87-AD-12-B at 4-7 (1990); Boston Gas Company, D.P.U. 88-67 (Phase II) at 7 (1989); Tennessee Gas Pipeline Company, D.P.U. 85-207-A at 11-12 (1986).

The information at issue pertains to the forecasted load for the G-3 rate class. It has not been subject to cross-examination by either the Department or the Attorney General.[5] The information that Fitchburg seeks to have admitted post-hearing concerns projections that will

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[4] Specifically, the Attorney General requests that the Department strike paragraphs two, three, and footnote 1 on page one of Fitchburg's reply brief as well as an attached affidavit (Motion to Strike at 1).

[5] Contrary to the Company's assertion, the information at issue is not of the type that the Department routinely permits the record to remain open after the close of hearings for receipt of updated information. See e.g., D.T.E. 01-50, at 21. Although we do not admit the new evidence that the Motion seeks to enter into the record, we would not have our ruling taken as a sign that we do not expect parties to call to our attention and to offer to correct significant mistakes of record in the presentation of their case. See Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass. 625, 641 (2004).

not be material until the Company's next reconciliation proceeding. Therefore, the information will not have any impact on the decision in this case. Accordingly, Fitchburg's Motion is denied. See Boston Gas Company, D.P.U. 96-50-B at 8-9 (1997).

When an objection is raised to an argument by an opponent that is not supported by the record, the Department may strike all or part of the argument. Fitchburg Gas and Electric Light Company, D.P.U. 19084, at 6 (1977). Because the Department has denied Fitchburg's Motion to reopen the record, we find that the argument contained in the cited portions of Fitchburg reply brief and attached affidavit refer to evidence not supported by the record. Accordingly, the Attorney General's Motion to Strike is allowed.

IV. TRANSITION CHARGE

A. Cash Working Capital Allowance

1. Introduction

In their day-to-day operations, utilities require funds to pay for expenses incurred in the course of business. These funds are either generated internally by a company or through short-term borrowing. Department policy permits a company to be reimbursed for the costs associated with the use of its funds for the interest expense incurred on borrowing. Boston Gas Company, D.P.U. 96-50 (Phase I) at 26 (1996), citing Western Massachusetts Electric Company, D.P.U. 87-260, at 22-23 (1988). In addition, in Fitchburg Gas and Electric Light Company, D.T.E. 02-24/25, at 51 (2002), the Department stated that Fitchburg could seek recovery of cash working capital for its purchased power for each of the purchased power services (i.e., standard offer service and default service) in a separate proceeding.

Pursuant to the Department's directive in D.T.E. 02-24/25, Fitchburg filed a lead/lag[6] study for a cash working capital allowance related to purchased power expenses in this proceeding (Exh. FGE MHC-1, Sch. MHC-7). The Company based its lead/lag study on data for the twelve month period ending December 31, 2001 (id.). The billing and collection data were later updated with data for the twelve month period ending December 31, 2002 (Fitchburg Brief at 8, citing Exh. FGE-MHC-2). For the purposes of the purchased power lead payment calculation, the Company excluded the vendor payment day (Tr. at 43). The Company calculated a purchased power lead of 40.51 days and a lag in receipt of revenues of 54.00 days, which results in a net purchased power lag of 13.49 days (54.00 days minus 40.51 days) (Exh. FGE MHC-2, at 3).

2. Positions of the Parties

a. Fitchburg

Fitchburg argues that, contrary to the Attorney General's assertions, it correctly calculated its purchased power cash working capital requirement (Fitchburg Reply Brief at 3). The Company concludes that it appropriately excluded the day that payment is made to a vendor in its calculation of the lead for purchased power expense because the funds are not available for Company use on the day that the payment is made (Fitchburg Brief at 3; Tr. at 43).

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[6] Lead days are the number of days between the average delivery date energy is purchased by the Company or services are rendered by a vendor to the Company and payment is made by Fitchburg (Exh. FGE-MHC-1, at 22). Lag days are the number of days between delivery of service to the Company's customers and the receipt by Fitchburg of payment for the service and availability of the funds (id.).

b. Attorney General

The Attorney General argues that the Company miscalculated its purchased power cash working capital requirement by understating its lead payment calculation by one day (Attorney General Brief at 2). The Attorney General contends that the lead in purchased power expense must account for the time of receipt of service through the time that payment is made for that service (id.). Therefore, the Attorney General requests that the Department require the Company to increase its purchased power lead from 40.51 to 41.51 days, resulting in a net purchased power lag of 12.49 days (54.00 days minus 41.51 days) (Attorney General Brief at 2, n.4).

3. Analysis and Findings

The Department has previously addressed the issue of funds availability in the computation of cash working capital allowances. In Commonwealth Electric Company, D.P.U. 89-114/ 90-331/91-80 (Phase One) at 22 (1991), the Department stated that a company "is legally obligated to have cash in its account sufficient to pay all checks drawn on the account" and, therefore, in computing payment lags, it is appropriate to assume that the payment of an invoice is made on the date the check is issued. Id. More recently, the Department has rejected the inclusion of check-clearing components in the cash working capital allowance associated with vendor payments. D.T.E. 02-24/25, at 50. Consistent with this treatment, the Company has eliminated check-clearing components, including those associated with vendor payments, from its cash working capital allowance. Therefore, the Department

finds that the Company has properly calculated its cash working capital allowance related to purchased power expense.

B. Uniform Transition Charge

1. Introduction

The Company proposes a uniform transition charge of $0.01187 per kilowatt-hour ("KWH") for 2003 (Exh. FGE-MHC-1, at 14). The Company calculated its uniform transition charge based on its restructuring plan and subsequent modifications ordered by the Department (id. at 9-11, citing Fitchburg Gas and Electric Light Company, D.T.E. 97-115/98-120 (1999); Fitchburg Gas and Electric Light Company, D.T.E. 99-110 (2001)).

The Company filed updated transition charge amounts that account for actual stranded costs through September 30, 2002 (Exh. FGE MHC-1, at 7, Sch. MHC-2). The updates incorporate the following adjustments: (1) an updated KWH forecast; (2) an updated forecast of the variable component of the transition charge; (3) the final Wyman 4 settlement credit; (4) a forecast of the pool transmission facility credit; (5) an updated forecast of above-market payments related to the Hydro Quebec and Lineweave contracts; and (6) an updated forecast of future deferrals and recoveries (id. at 7-8).

2. Positions of the Parties

a. Fitchburg

Fitchburg argues that it has calculated its uniform transition charge in accordance with its Department-approved restructuring plan (Fitchburg Brief at 5-6). The Company urges the Department to reject the Attorney General's recommendation that Fitchburg implement a

class-specific transition charge (Fitchburg Reply Brief at 2-3). The Company contends that the implementation of a class-specific transition charge would add a degree of complexity to the calculation of the transition charge that would not provide sufficient benefits (Tr. at 28-30). The Company states that, because of the constraint of the 15 percent rate reduction requirement, it would be difficult to design a new reconciliation mechanism that would achieve perfect equity between rate classes (Fitchburg Reply Brief at 2). Moreover, Fitchburg argues that requiring it to perform another reconciliation would add additional administrative costs and would make an already complex filing more complicated and difficult to review (id. at 2-3, citing Tr. at 28-30).

b. Attorney General

The Attorney General notes that Fitchburg projects a shortfall for the G-3 rate class for 2003 (Attorney General Brief at 1, citing Exh. FGE MHC-1, Sch. MHC-4, at 5-6). The Attorney General asserts that this shortfall will ultimately be borne by all customer classes because Fitchburg has a uniform transition charge (Attorney General Brief at 1). The Attorney General argues that the Department should require the Company to monitor the projected shortfall and implement a class-specific transition charge if the shortfall does materialize (id. at 2).

3. Analysis and Findings

In D.T.E. 97-115/98-120, at 40, the Department directed the Company to implement a uniform transition charge. The Department found that uniformity among all classes ensures fairness and avoids discrimination. Id. Fitchburg's filing in the instant proceeding is

consistent with this directive. Therefore, the Department finds that the Company has calculated its uniform transition charge in compliance with its restructuring plan and subsequent modifications ordered by the Department. Accordingly, Fitchburg's uniform transition charge is approved.

C. Congestion Costs

1. Introduction

Fitchburg proposes to recover $875,423 in transmission-related congestion costs through the Company's external transmission charge (Exh. FGE-KMA-1, Sch. KMA-1, at 1-3).[7]

2. Positions of the Parties

a. Fitchburg

The Company states that it is billed for the congestion costs at issue under the NEPOOL open access tariff (Fitchburg Reply Brief at 4; Tr. at 40). Fitchburg states that these charges are allocated to it as a transmission-providing entity and that the Company's standard offer service supply contract does not allow Fitchburg to allocate these costs to its standard offer service supplier (Fitchburg Reply Brief at 4; Tr. at 40-41). Fitchburg argues that shifting these congestion costs to the supplier, as suggested by the Attorney General, is inconsistent with its past practice as well as a breach of the terms of its standard offer service contract

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[7] Congestion costs are incurred when a transmission constraint requires the dispatch of a more expensive generation unit than would have otherwise been dispatched. The "congestion cost" is the difference between the more expensive generation unit's bid price and the energy clearing price.

(Fitchburg Reply Brief at 4-5). Finally, the Company claims that its proposed treatment of congestion costs has been accepted by the Department in Fitchburg's prior reconciliation filings (id. at 4, citing D.T.E. 01-103-A).

b. Attorney General

The Attorney General argues that, under the standard offer service contract, the seller is responsible for the congestion costs for which the Company now seeks recovery (Attorney General Brief at 2-3, citing Exh. AG 3-6, Att. at 2, 5). The Attorney General contends that the Company's explanation of why it pays these congestion costs lacks merit because the issue is not which party gets billed for these congestion costs, but rather which party is responsible for these congestion costs (id. at 3). Therefore, the Attorney General states that the Department should deny the Company's request for recovery of congestion costs (id.).

3. Analysis and Findings

The Department must determine if the congestion costs at issue should be recovered from Fitchburg's ratepayers or whether the Company should have instead sought recovery of these costs from its standard offer service supplier. A company must pursue all reasonable and prudent options to collect a debt, even where a controversy exists as to the responsible party. See Boston Gas Company, D.T.E. 88-67, at 102 (1988), citing Boston Gas Company, D.P.U. 1100, at 84-86 (1982).[8] Likewise, the burden rests with Fitchburg to show that it has

[8] If a company is found to have been negligent in attempting to seek recovery of a debt, the Department will provide for appropriate remedial treatment. See D.T.E. 88-67, at 102, citing D.P.U. 1100, at 84-86.

pursued all reasonable and prudent options to determine the party responsible for the congestion costs at issue here.

Fitchburg testified that it conducted a detailed review of the provisions of the contract in order to determine the party responsible for the congestion costs (Tr. at 40-41). Based on this review, Fitchburg reasonably concluded that the congestion costs it is billed under the NEPOOL open access tariff are allocated to it as a transmission-providing entity and that the terms of its standard offer service contract do not permit it to allocate these transmission costs to its supplier (id.).[9] There is nothing in the record to suggest that the Company's failure to pursue recovery of these costs from its standard offer service supplier was imprudent. Accordingly, the Department will allow Fitchburg to recover $875,423 of transmission-related congestion costs through the external transmission charge.

V. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the proposed transition, transmission, standard offer, and default service costs and revenues submitted by Fitchburg Gas and Electric Light Company on December 20, 2002, for calendar year 2002, are APPROVED; and it is

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[9] Certain congestion costs, such as energy uplift costs, which are incurred through NEPOOL, are allocated to the supplier under Fitchburg's standard offer service contract (Tr. at 40-41).

FURTHER ORDERED: That Fitchburg Gas and Electric Light Company comply with all directives contained in this Order.

By Order of the Department,

\s\
Paul G. Afonso, Chairman

\s\
James Connelly, Commissioner

\s\
W. Robert Keating, Commissioner

\s\
Judith F. Judson, Commissioner

\s\
Brian Paul Golden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.